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DRAFT STATUTORY INSTRUMENTS

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**2015 No.**

**The General Medical Council (Fitness to Practise and Over-arching Objective) and the Professional Standards Authority for Health and Social Care (References to Court) Order 2015**

**PART 2**

**The Medical Practitioners Tribunal Service**

**Allegations of impaired fitness to practise: consideration by Medical Practitioners Tribunal**

**5.—(1)** In section 35C of the Medical Act (functions of the Investigation Committee)<sup>(1)</sup>, in subsection (5)(b), after “refer the allegation to” insert “the MPTS for them to arrange for the allegation to be considered by”.

(2) In subsections (4), (5), (6) and (7) of that section, for “Fitness to Practise Panel”, in each place it appears, substitute “Medical Practitioners Tribunal”.

(3) In section 35D of that Act (the title to which becomes “Functions of a Medical Practitioners Tribunal”)<sup>(2)</sup>, in subsection (1)—

(a) for “section 35C” substitute “section 35C(5)(b)”, and

(b) for “a Fitness to Practise Panel,” substitute—

“the MPTS—

(a) the MPTS must arrange for the allegation to be considered by a Medical Practitioners Tribunal, and

(b)”.

(4) In subsection (2) of that section—

(a) for “Where the Panel” substitute “Where the Medical Practitioners Tribunal”, and

(b) in paragraph (c), for “the Panel” substitute “the Tribunal”.

(5) In subsections (4), (5), (6), (9) and (12) of that section, for “a Fitness to Practise Panel” substitute “a Medical Practitioners Tribunal”; and in subsections (3), (5), (10) and (12) of that section, for “the Panel”, in each place it appears, substitute “the Tribunal”.

(6) In subsection (4) of that section, for “subsection (5) below applies” substitute “subsections (4A) and (4B) below apply”.

(7) After that subsection insert—

“(4A) The Tribunal may direct that the direction is to be reviewed by another Medical Practitioners Tribunal prior to the expiry of the period of suspension; and, where the Tribunal do so direct, the MPTS must arrange for the direction to be reviewed by another Medical Practitioners Tribunal prior to that expiry.

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(1) Section 35C was substituted by S.I. 2002/3135 and amended by S.I. 2006/1914, S.I. 2008/3131 and S.I. 2014/1101.

(2) Section 35D was substituted by S.I. 2002/3135 and amended by S.I. 2014/1101.

(4B) The Registrar may, at any time prior to the expiry of the period of suspension, refer the matter to the MPTS for them to arrange for the direction to be reviewed by a Medical Practitioners Tribunal prior to that expiry; and, where a matter is referred to the MPTS under this subsection, the MPTS must arrange for the direction to be reviewed by a Medical Practitioners Tribunal.”

(8) In subsection (5) of that section—

- (a) for “In such a case” substitute “On a review arranged under subsection (4A) or (4B)”,
- (b) omit the “or” following paragraph (b),
- (c) in paragraph (c), after “the expiry of the current period of suspension” insert “or from such date before that expiry as may be specified in the direction”, and
- (d) after that paragraph insert “; or  
(d) revoke the direction for the remainder of the current period of suspension,”.

(9) In subsection (7) of that section—

- (a) for “a Fitness to Practise Panel have” substitute “a Medical Practitioners Tribunal have”,
- (b) for “a Fitness to Practise Panel shall” substitute “the Registrar shall refer the matter to the MPTS for them to arrange for a Medical Practitioners Tribunal to”, and
- (c) for paragraph (a) substitute—
  - “(a) the person makes a request to the Registrar for there to be such a review,”.

(10) In subsection (8) of that section—

- (a) for “On such a review the Panel may” substitute “Where a matter is referred to the MPTS under subsection (7), the MPTS must arrange for the direction to be reviewed by a Medical Practitioners Tribunal; and on such a review, the Tribunal may”, and
- (b) in paragraph (c), for “the Panel” substitute “the Tribunal”.

(11) In subsection (9) of that section—

- (a) for paragraph (b) substitute—
  - “(b) the Registrar is of the opinion that that person has failed to comply with any requirement imposed on the person as such a condition,”, and
- (b) for “subsection (10)” substitute “subsection (9A)”.

(12) After subsection (9) of that section insert—

“(9A) The Registrar may refer the matter to the MPTS for them to arrange for the direction to be reviewed by a Medical Practitioners Tribunal; and, where a matter is referred to the MPTS under this subsection, the MPTS must arrange for the direction to be reviewed by a Medical Practitioners Tribunal.”

(13) In subsection (10) of that section, for “In such a case” substitute “Where, on a review arranged under subsection (9A), the Tribunal judge the person concerned to have failed to comply with a requirement imposed as a condition such as is mentioned in subsection (9)(a),”.

(14) For subsection (11) substitute—

“(11) Where, in a case which does not come within subsection (9) above, a direction that a person’s registration be subject to conditions has been given under subsection (2), (5) or (8) above or paragraph 5A(3D) or 5C(4) of Schedule 4 to this Act, subsections (11A) and (11B) below apply.

(11A) The Tribunal may direct that the direction is to be reviewed by another Medical Practitioners Tribunal prior to the expiry of the period for which the conditions apply; and, where the Tribunal do so direct, the MPTS must arrange for the direction to be reviewed by another Medical Practitioners Tribunal prior to that expiry.

(11B) The Registrar may, at any time prior to the expiry of the period for which the conditions apply, refer the matter to the MPTS for them to arrange for the direction to be reviewed by a Medical Practitioners Tribunal; and, where a matter is referred to the MPTS under this subsection, the MPTS must arrange for the direction to be reviewed by a Medical Practitioners Tribunal.”

(15) In subsection (12) of that section, for “In such a case” substitute “On a review arranged under subsection (11A) or (11B)”.

(16) After that subsection insert—

“(13) Where a Medical Practitioners Tribunal have yet to hold a hearing to consider a case in which they would have the power to give or make a direction, revocation or variation under subsection (5), (6), (8), (10) or (12) above, but the person concerned and the General Council have agreed in writing to the terms of such a direction, revocation or variation—

- (a) the Tribunal, on considering the matter on the papers, or the chair of the Tribunal, on doing so instead of the Tribunal, may give a direction or make a revocation or variation on the agreed terms; or
- (b) if the Tribunal or chair (as the case may be) acting under paragraph (a) determines that the Tribunal should hold a hearing to consider the matter, the MPTS must arrange for a hearing of the Tribunal for that purpose.

(14) A direction, revocation or variation given or made under subsection (13)(a) by a Tribunal or the chair of a Tribunal is to be treated for the purposes of this Act as if it had been given or made by the Tribunal under subsection (5), (6), (8), (10) or (12) above (as the case may be).”

(17) In section 35E of the Medical Act (provisions supplementary to section 35D)(3)—

- (a) in subsection (1), for “a Fitness to Practise Panel” substitute “a Medical Practitioners Tribunal”,
- (b) in that subsection, for “the Registrar” substitute “the MPTS”, and
- (c) in subsections (4) and (5), for “a Fitness to Practise Panel has” substitute “a Medical Practitioners Tribunal have”.

(18) After subsection (1) of that section insert—

“(1A) Where, under section 35D, a Medical Practitioners Tribunal—

- (a) give a direction or make a variation as mentioned in subsection (1),
- (b) give a direction that a suspension be terminated,
- (c) revoke a direction for conditional registration or a condition imposed by such a direction, or
- (d) decide not to give a direction,

the MPTS shall forthwith serve on the Registrar and the Professional Standards Authority for Health and Social Care notification of the direction, variation, revocation or decision.

(1B) A notification under subsection (1A) must state whether, in giving the direction or making the variation, revocation or decision, the Tribunal took any undertakings into account in accordance with rules containing provision by virtue of paragraph 1(2C) of Schedule 4.”

(19) In paragraph 9 of Schedule 4 to that Act (extension of time for appealing)(4)—

- (a) in paragraph (a) after “the Registrar” insert “or the MPTS”,

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(3) Section 35E was substituted by S.I. 2002/3135 and amended by S.I. 2006/1914 and S.I. 2014/1101.

(4) Schedule 4 was substituted by S.I. 2002/3135.

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**Draft Legislation:** This is a draft item of legislation. This draft has since been made as a UK Statutory Instrument: The General Medical Council (Fitness to Practise and Over-arching Objective) and the Professional Standards Authority for Health and Social Care (References to Court) Order 2015 No. 794

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- (b) in paragraph (b) after “the Registrar is” insert “or (as the case may be) the MPTS are”,
- (c) after “the Registrar” insert “or (as the case may be) the MPTS”, and
- (d) for “he thinks” substitute “he or they think”.